MBT (MALAYSIA) SDN BHD

v.

ASAWIRA SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[SUIT NO: D4-22-867-2001]
23 JANUARY 2004

CIVIL PROCEDURE: *Writ of summons - Validity of - Application by defendant to set aside - Irregularities - Amount being claimed for costs not specified - Time limited for appearing wrongly stated - Writ served on defendant during court vacation - Whether writ null and void and should be set aside - Whether irregularities curable - Rules of the High Court 1980, O. 6 r. 2(1)(b), O. 12 r. 4(b), O. 18 r. 5, O. 2 r. 1*

CIVIL PROCEDURE: *Rules of court - Non-compliance - Irregularities - Curability - Rules of the High Court 1980, O. 2 r. 1(1), (2), O. 1A - Principles and application - Whether court may still set aside 'proceedings in which the failure occurred' - Writ of summons not complying with O. 6 r. 2(1)(b) - Whether curable*

This was the defendant's appeal to the judge-in-chambers from the decision of the senior assistant registrar dismissing its application to set aside the plaintiff's writ of summons or, alternatively, the service of the writ of summons together with the statement of claim attached thereto. The defendant argued that the plaintiff's writ of summons was bad for non-compliance with the provisions of O. 6 r. 2(1)(b) Rules of the High Court 1980 ('RHC'), videlicet: (i) it failed to state the amount being claimed for costs; and (ii) it erroneously specified that the defendant had an eight-day reprieve to pay the debt when O. 6 r. 2(1)(b) RHC read together with O. 12 r. 4(b) RHC would allow the defendant 20 days (time limited for appearing).

Held (allowing the appeal):

[1] The requirements of O. 6 r. 2(1)(b) RHC are mandatory and must, therefore, be strictly complied with; there is no room for judicial discretion. A writ of summons that fails to comply with the stipulations in O. 6 r. 2(1)(b) RHC is null and void. Indeed, the plaintiff's writ of summons should have been rejected at the filing/registration counter. (pp 663 h, 664 a-h, 665 a-g, 666 a-d, 667 g-h, 672 f-d & 673 a)

[2] The service of the plaintiff's writ of summons on the defendant on 8 June 2001 was invalid, ineffective and void by virtue of O. 18 r. 5 RHC. This was because 8 June 2001 was a gazetted court-vacation day and neither the leave of the court nor the consent of the defendant had been obtained for the writ to be served on that particular day. (pp 668 a-g, 672 f-d & 673 a)

[3] The plaintiff's non-compliance with the various provisions of the RHC was incurable. It was not the function of the court to rectify the defects in the plaintiff's writ, nor could the court suffer or condone the plaintiff's cavalier disregard for the rules of court. The defendant here had been prejudiced. Although O. 2 r. 1(1) RHC has removed the old distinction between nullities and irregularities, it does not prevent the court from setting aside the proceedings in which the failure occurred (O. 2 r. 1(2) RHC). (pp 669 a-c, 670 h, 671 a-h, 672 a, f-d & 673 a)

Case(s) referred to:

Chellappa Kalimuthu v. Sime UEP Proprietor Bhd & Ors [2002] 2 CLJ 198 HC ***(refd)***

Genisys Integrated Engineers Pte Ltd v. UEM Genisys Sdn Bhd & Ors [2001] 5 CLJ 556 HC ***(refd)***

Khor Cheng Wah v. Sungai Way Leasing Sdn Bhd [1997] 1 CLJ 396 CA ***(refd)***

Letchmy Chengodam v. Salahuddin Mukhtar [1994] 2 AMR 30 ***(refd)***

Malayan Banking Bhd v. Lim Tee Yong & Ors [1994] 4 CLJ 558 HC ***(refd)***

Malaysian Sheet Glass Bhd lwn. Non-Metalic Mineral Products Manufacturing Employees' Union [1998] 1 CLJ Supp 103 HC ***(refd)***

Nyana Pandithan v. Vettiveloo Kasinathan & Ors [1997] 1 CLJ Supp 30 HC ***(refd)***

Omex Shipping Co Ltd v. World Aero Supplies Pte Ltd & Anor [1987] 1 MLJ 281 ***(refd)***

Paruvathy Palany v. Sathiasealan Govindasamy [1999] 6 CLJ 113 HC ***(refd)***

Pacific Centre Sdn Bhd v. United Engineers (Malaysia) Bhd [1984] 2 CLJ 56; [1984] 2 CLJ (Rep) 319 HC ***(refd)***

Perbadanan Nasional Insurans Sdn Bhd v. Pua Lai Ong [1996] 3 CLJ 321 CA ***(foll)***

Pushpaneela VN Suppiah v. Ong Yen Chong & Anor [1999] 4 AMR 3867 ***(refd)***

Ratnam v. Cumarasamy & Anor [1965] 31 MLJ 228 ***(refd)***

Re CHS [2001] 8 CLJ 653 HC ***(refd)***

Re Delta Drive (M) Sdn Bhd; Hong Leong Finance Bhd v. Delta Drive (M) Sdn Bhd (No 2) [2000] 4 CLJ 264 HC ***(refd)***

S Balakrishnan v. Khalid Aluminium Industries Sdn Bhd [1993] 4 CLJ 393 HC ***(refd)***

S Ravi G Suppiah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1995] 2 CLJ 152 HC ***(refd)***

Seng Loong Trading Co v. Angel Department Store Sdn Bhd [1987] 1 MLJ 310 ***(refd)***

Sykt Telekom Malaysia Bhd v. Business Chinese Directory Sdn Bhd [1994] 2 CLJ 729 SC ***(refd)***

Tai Choi Yu v. The Government of Malaysia & Ors [1993] 3 CLJ 405 HC ***(refd)***
Tan Tin Swee v. Kangar Properties Sdn Bhd [1990] 2 CLJ 457; [1990] 3 CLJ (Rep) 199 HC ***(refd)***
Ting Hua Yiew v. Ace Commercial Enterprise Sdn Bhd [1996] 2 MLJ 678 HC ***(refd)***
Utama Merchant Bank Bhd v. Dato' Mohd Nadzi Mohd Salleh [2001] 2 CLJ 235 HC ***(refd)***
Yu Oi Yong & Anor v. Ho Toong Peng & Ors [1977] 1 MLJ 120 ***(refd)***
Zamrud Properties Sdn Bhd v. Pang Mooi Gaid & Anor [1999] 5 MLJ 180 HC ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 2 rr. 1, 2(2), 3, O. 6 r. 2(1)(b), O. 12 r. 4(b), O. 18 r. 5, O. 92 r. 4
Subordinate Courts Rules 1980, O. 2 r. 1

Rules of the Supreme Court 1970 [Sing], O. 18 r. 5

For the plaintiff - Elaine Yap; M/s Wong & Partners
For the defendant - Jayne Koe (Marcelle M Sinnappa); M/s Cheah Teh & Su

Reported by Gan Peng Chiang

JUDGMENT

Abdul Malik Ishak J:

Introduction

The defendant by way of encl. 8 applied under O. 2 r. 2(2) of the Rules of the High Court 1980 ("RHC") read with O. 92 r. 4 of the RHC for, *inter alia*, the following orders:

(i) that the writ of summons be set aside; and

(ii) further and in the alternative that the service of the writ of summons together with the statement of claim attached thereto and alleged to have been served onto the defendant be set aside.

The learned senior assistant registrar refused to accede to encl. 8 and the defendant now appealed to the judge in chambers as seen in encl. 17.

To The Heart Of The Matter

Without further ado, I must proceed to examine the defects in the writ of summons. For this exercise, I must address the following salient points:

(a) that the writ of summons must be held to be null and void as it failed to comply with the mandatory provisions of O. 6 r. 2(1)(b) of the RHC and Form 2 of the RHC

Categorically I must hold and it was part and parcel of my judgment that the writ of summons together with the statement of claim ought to be dismissed *ex debito justitiae* as it was null and void since it failed to comply with the mandatory requirements of O. 6 r. 2(1)(b) of the RHC and Form 2 of the RHC.

(b) that the writ of summons did not state the amount of the costs being claimed

At pages two and three of the writ of summons under caption "CLAIM INDORSEMENT", the plaintiff itemised the amount of its claim to be RM1,534,175.84. But the plaintiff failed to state the amount of costs being claimed and to be paid by the defendant. As a consequence thereto, the defendant was said to be hindered in that the defendant was unable to ascertain the amount of the claim to be paid by the defendant and as a result thereto the defendant was said to be embarrassed.

It was urged upon me that the negligence of the plaintiff in failing to state the amount of the costs that should be paid by the defendant in the writ of summons had not only inconvenienced the defendant but it was also an irregularity and that irregularity had contravened the mandatory provisions of O. 6 r. 2(1)(b) of the RHC. The writ of summons, so it was submitted, ought to be held to be null and void and should therefore be set aside. I agreed with these apt submissions.

(c) that the writ of summons had wrongfully given only eight (8) days to the defendant to pay the amount claimed whereas the defendant was allowed under the RHC twenty (20) days to enter an appearance

At pp. 2 and 3 of the writ of summons under caption "CLAIM INDORSEMENT", the following legend appeared:

> ... if the amount claimed and the costs are paid to the plaintiff or his solicitors within 8 days, further proceedings will be stayed ...

And that, in my judgment, contradicted and contravened the mandatory requirements of O. 6 r. 2(1)(b) of the RHC read together with O. 12 r. 4 of the RHC. Now, O. 6 r. 2(1)(b) of the RHC requires that (the relevant parts only):

Before a writ is issued it must be indorsed:

(b) ... with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant:

(i) ... pays the amount so claimed to the plaintiff or his solicitor;

(ii) ... pays that amount into Court.

While O. 12 r. 4(b) of the RHC states as follows:

4. References in these rules to the time limited for appearing are references:

(b) in the case of a writ served within Sarawak or Sabah, to 10 days after service of the writ (including the day of service) or in the case of a defendant whose place of residence or if an incorporated society whose registered office of business is not within the Division or Residency in which is situated the Registry out of which the writ of summons was issued, 20 days after service of the writ (including the day of service).

Factually speaking the plaintiff knew that the defendant was in Sarawak and it was for that reason that the writ of summons was addressed to the defendant's office in Kuching, Sarawak. Since the writ of summons was issued by the Kuala Lumpur High Court and intended to be served in Sarawak, the defendant should have been given a period of 20 days in accordance with the requirements of O. 6 r. 2(1)(b) of the RHC and O. 12 r. 4(b) of the RHC to not only scrutinise but also consider the plaintiff's claim and take further steps whether to pay up or to enter an appearance in the Kuala Lumpur High Court. The defendant should not be deprived of its rights to the period of 20 days in order to scrutinise and verify the authenticity of the loan as alleged and claimed by the plaintiff. The defendant too should not be deprived of the opportunity to challenge the plaintiff's claim. I have no hesitation, due to this irregularity or defect, to set aside the writ of summons accordingly. In *Seng Loong Trading Co. v. Angel Department Stores Sdn. Bhd.* [1987] 1 MLJ 310, Gunn Chit Tuan J (as he then was) proceeded to set aside the writ of summons and its service thereof and with liberty to file afresh on the ground that the period given in the writ for the defendant to enter an appearance was only eight days whereas the defendant should have been given 12 days in order to do that. Another case in point and it would be worth reading would be the case of *Tan Tin Swee v. Kangar Properties Sdn Bhd* [1990] 2 CLJ 457; [1990] 3 CLJ (Rep) 199.

The Mandatory Provisions Of O. 6 r. 2(1)(b) Of The RHC

I am of the considered view that the requirements in O. 6 r. 2(1)(b) of the RHC are mandatory and must therefore be strictly complied with. Any writ of summons which has failed to comply with the mandatory requirements of O. 6 r. 2(1)(b) of the RHC must be construed to be null and void. The intention of Parliament in promulgating this Order is clear and beyond question. In formulating this Order, Parliament deliberately employs the word "must" which gives it a mandatory effect and there is no room for the court to use its discretion. In *Perbadanan Nasional Insurans Sdn Bhd v. Pua Lai Ong* [1996] 3 CLJ 321, Siti Norma Yaacob JCA (now FCJ) speaking for the Court of Appeal remarked that (see p. 333 of the report):

> The word 'must' as opposed to 'may' is used in the rule, and we interpret that to mean as implying a peremptory mandate as opposed to a mere direction or discretion as the word 'may' implies. We equate the meaning of the word 'must' as that given to the word 'shall', and for that reason the choice of the word 'must' in the rule does not create the existence of any discretion or empowers the court to exercise such a discretion.

The interpretation of the word "must" and the effect of its use in the RHC given by the Court of Appeal in *Pua Lai Ong*'s case was followed dutifully by other judges and Judicial Commissioners in the following cases:

(1) *Malaysian Sheet Glass Bhd lwn. Non-Metallic Mineral Products Manufacturing Employees' Union* [1998] 1 CLJ Supp 103;

(2) *S. Ravi a/l G. Suppiah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1995] 2 CLJ 152;

(3) *Ting Hua Yiew v. Ace Commercial Enterprise Sdn Bhd* [1996] 2 MLJ 678;

(4) *Zamrud Properties Sdn Bhd v. Pang Mooi Gaid & Anor* [1999] 5 MLJ 180; and

(5) *Re Delta Drive (M) Sdn Bhd; Hong Leong Finance Bhd v. Delta Drive (M) Sdn Bhd (No: 2)* [2000] 4 CLJ 264.

The Rules Of The Court Must Be Strictly Complied With

This brings to the forefront the case of *Ratnam v. Cumarasamy & Anor* [1965] 31 MLJ 228, a decision of Lord Guest who wrote the opinion for the Privy Council. In that case, Lord Guest at p. 229 of the report aptly said that:

> The Rules of Court must *prima facie* be obeyed, …

And the speech of Lord Guest in that case was adopted by other judges and Judicial Commissioners in the following cases:

(1) *S. Balakrishnan v. Khalid Aluminium Industries Sdn. Bhd.* [1993] 4 CLJ 393;

(2) *Yu Oi Yong & Anor v. Ho Toong Peng & Ors* [1977] 1 MLJ 120;

(3) *Sykt Telekom Malaysia Bhd v. Business Chinese Directory Sdn Bhd* [1994] 2 CLJ 729, SC;

(4) *S. Ravi a/l G. Suppiah v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor (supra)*;

(5) *Malayan Banking Bhd v. Lim Tee Yong & Ors* [1994] 4 CLJ 558; and

(6) *Chellappa Kalimuthu v. Sime UEP Proprietor Bhd & Ors* [2002] 2 CLJ 198.

Practice Directions have been issued from time to time to guide legal practitioners of the need to comply with the rules of procedure as set out in the RHC. The "Circular of the Chief Registrar of the Federal Court Bil. 2/ 1999" merits reference and there it states, *inter alia*:

> 2. This is to inform that there are still case documents filed in courts which do not fully comply with Orders and Rules of Court available ... any document to be filed in Courts should be rejected at the registration counter if rules pertaining to it were not fully and strictly complied with.

Tun Dato' Seri Mohd Eusoff bin Chin, the former Chief Justice of Malaysia by way of a circular letter dated 10 April 2000 stressed the need to comply with the rules and procedures and there his Lordship directed:

> **6. Documents which do not comply with the Courts rules**
>
> Writs, summons, affidavits and other documents filed which do not comply with the rules should be rejected.

Now, taken in its correct perspective, the writ of summons in question which failed to comply with O. 6 r. 2(1)(b) of the RHC should have been rejected by the registry at the registration counter. The fact that it was not rejected at the filing stage does not mean that the writ's defectiveness has been sanctioned or excused by the courts. It must be borne in mind that the registry merely performs an administrative cum clerical function. On the other hand, it must be emphasised that the defendant has the inherent right to challenge the writ and to apply to the court to have that writ set aside.

The Service Of The Writ Of Summons During The Court Vacation

In my judgment, the writ of summons together with the statement of claim were wrongly served on the defendant on 8 June 2001 because on that day it was a court vacation. The government gazette dated 22 March 2001 exhibited as an exhibit marked as "M2" in encl. 9 categorically stated that:

> the vacation for the High Courts of Malaya for the calendar year of 2001 is:
>
> (a) from Monday, 28.5.2001 to Saturday 9.6.2001; ...

This meant that the whole service of the writ of summons and the statement of claim on the defendant on 8 June 2001 must be held to be invalid, ineffective and void.

Order 18 r. 5 of the RHC provides as follows:

> Pleadings shall not be served during the Court Vacation except with the leave of the Court or with the consent of all the parties to the action.

Here, it was not disputed that:

(a) no leave was obtained from this court for the purpose of service of the writ of summons and the statement of claim on the defendant on 8 June 2001 – which was during the court's vacation; and

(b) no consent was requested and obtained by the plaintiff from the defendant for such a move.

In retort, the plaintiff merely alleged without any reasons given in para. 6 of encl. 11 that "the date for the court's vacation cannot be used as a ground for setting aside or revocation." Such retort, without more, cannot assist the plaintiff at all. The failure on the part of the plaintiff to strictly comply with the rules would render the whole of the service of the writ together with the statement of claim as invalid, ineffective and void. The result would be this: that the service of those documents should be set aside. In *Omex Shipping Co. Ltd. v. World Aero Supplies Pte. Ltd. & Anor.* [1987] 1 MLJ 281, the Singapore court set aside a judgment in default entered against the second defendant there as a result of the latter's failure to file and serve its defence during the court vacation. The Singapore court was of the view that under O. 18 r. 5 of the Rules of the Supreme Court 1970 the second defendant was prohibited from serving his defence during the court vacation.

Would The Discrepancies Be Curable?

In encl. 11 at para. 5 thereof, the plaintiff averred as follows:

> All discrepancies raised by the defendant may be cured by the court without any order to set aside or stay proceeding as prayed by the defendant.

That, to my mind, was a cavalier attitude adopted by the plaintiff. It was an attitude that borders on being unforgivably indifferent. Surely the plaintiff was not suggesting that it could willy nilly file any form of a writ which does not comply with the form as set out in the RHC simply because the court could rectify the defects. I must at once assert and categorically state that the court's function is not to help correct the plaintiff's counsel shoddy work nor condone nor tolerate the plaintiff's disregard for the rules as embodied in the RHC. It must be remembered that the rules must be strictly obeyed. I would, accordingly, answer the question posed under this head in the negative.

The Plaintiff's Unenviable Stand

It would appear that the plaintiff did not dispute the facts that the writ of summons and the purported service of the same were defective since:

(a) the writ of summons did not comply with the mandatory requirements of O. 6 r. 2(1)(b) of the RHC; and

(b) the plaintiff had also failed to comply with the mandatory requirements of O. 18 r. 5 of the RHC.

But the plaintiff seemed to be of the view that as O. 2 r. 1 of the RHC had done away with the distinction between nullities and irregularities, the defects as stated earlier were mere irregularities and they were curable. Those defects were said not to have nullified the whole proceedings. The plaintiff relied on the following cases to support its contention:

(i) *Khor Cheng Wah v. Sungai Way Leasing Sdn Bhd* [1997] 1 CLJ 396, CA;

(ii) *Re CHS* [2001] 8 CLJ 653; and

(iii) *Paruvathy a/p Palany v. Sathiasealan a/l Govindasamy* [1999] 6 CLJ 113.

The plaintiff further seemed to be of the view that:

(a) the non-compliance with O. 6 r. 2(1)(b) of the RHC and O. 18 r. 5 of the RHC had not caused any injustice or embarrassment to the defendant and, consequently, it was a curable irregularity under O. 2 r. 1 of the RHC; and

(b) that by virtue of the recent amendments to the RHC – in particular the new O. 2 r. 3 of the RHC and O. 1A of the RHC, the defendant must show that substantial miscarriage of justice have been occasioned as a result of the plaintiff's non-compliance with the RHC in order to succeed in its application in encl. 8 to set aside the writ of summons and the service of the same.

The plaintiff sought to emphasise that the defects as alluded to earlier were mere irregularities and was curable by the court because no injustice or prejudice was caused to the defendant.

Prejudice To The Defendant

Just because the defendant was able to speedily engage solicitors and proceed to take the necessary action did not and could not necessarily mean that the defendant was not prejudiced. If the plaintiff were to be allowed to adopt this perverse line of argument then this would mean that where the writ was irregular, as in this case, it would be better for the defendant to allow judgment in default to be entered and only then would the defendant take the necessary steps to set aside the default judgment on the basis that it was prematurely taken.

Again, simply because the defendant had challenged the regularity of the plaintiff's writ, the plaintiff uttered the often used accusation that the defendant was "adopting a delaying approach to stifle this suit right from the outset." Viewed in its correct perspective, perhaps one should consider that the plaintiff should first set its house in order at the very outset and not filed shoddy cause papers and then got onto its unruly horse like a gladiator and start to accuse the defendant of delaying. The plaintiff might as well adopt the easy way out by photostating a page of the RHC forms and write in the parties' names and file it as a writ without the need to reproduce the writ in its proper A4 form. Who says that it is easy to practice law?

In my judgment, the plaintiff cannot claim to be prejudiced because the plaintiff was certainly at liberty to file a fresh suit with regularised cause papers. On the other hand, the defendant should not have to be prejudiced by having to be dragged to court premised on an irregular writ.

Order 2 Rule 1 Of The RHC

It must be borne in mind that whilst O. 2 r. 1(1) of the RHC does away with the old distinction between nullities and irregularities, it does not prevent this court from setting aside wholly or in part the proceedings in which the failure occurred. Order 2 r. 1(2) of the RHC states as follows:

> (2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

and this brings into sharp focus the case of *Pushpaneela a/p VN Suppiah v. Ong Yen Chong & Anor* [1999] 4 AMR 3867 where Faiza Tamby Chik J at p. 3871 aptly said:

> Although the new rule does away with the old distinction between nullities and irregularities under Order 2 r. 1(2) of the SCR, the court may set aside wholly or in part the proceedings in which the failure occurred. I am of the view in this case effect of non compliance of Order 54 is one where the court should set aside the proceedings wholly because Order 54 is a specific procedure for small claims and thus it should be followed strictly. A judgment should be based upon the issues raised in the pleadings. It is the duty of the courts to follow the rules of procedure and practice to ensure that justice is done.

Mohd. Hishamudin Yunus J in *Nyana Pandithan v. Vettiveloo Kasinathan & Ors* [1997] 1 CLJ Supp 30 was of the view that a generous use of O. 2 r. 1 of Subordinate Courts Rules 1980 by the courts would make a mockery of the rules of procedure.

Guided by these authorities, my own views would be along the following lines. That although the defects as alluded to earlier were mere irregularities that would not automatically entitle the courts to declare the proceedings as null and void. The courts have the discretion under O. 2 r. 1(2) of the RHC to decide whether it should set aside wholly or in part the proceedings as a result of those defects. It is certainly the function of this court to scrutinise and consider the defects in each and every case in order to decide if the said defects are serious after taking into account all the relevant facts of the case. It involves a judicial discretion that has to be exercised cautiously and based purely on the facts of each case. In the context of the present case, the defects as alluded to earlier were certainly serious.

Should O. 2 r. 1 Of The RHC Be Invoked In Favour Of The Plaintiff?

I declined to do so. This case was a perfect example of a blatant non-compliance with the very basic and fundamental rules of the court. If such a fundamental non-compliance was curable, it would open the flood gates and it would be a carte-blanche for litigants to file their writs without due regard to the basic requirements of the rules of the court as embodied in the RHC and

the defendant who received such a writ will be placed in a disadvantaged position as the defendant would not be properly alerted as to the correct time limit to enter an appearance. Furthermore, if the defendant failed to act in time, a judgment in default will inevitably be entered against the defendant.

It is a correct proposition of the law to say that the "curing provision" should not be wantonly utilised. It would be ideal to read the following cases:

(1) *Utama Merchant Bank Bhd v. Dato' Mohd Nadzi bin Mohd Salleh* [2001] 2 CLJ 235;

(2) *Tai Choi Yu v. The Government of Malaysia & Ors* [1993] 3 CLJ 405;

(3) *Genisys Integrated Engineers Pte Ltd v. UEM Genisys Sdn Bhd & 5 Ors* [2001] 5 CLJ 556; and

(4) *Letchmy a/l Chengodam v. Salahuddin b Mukhtar* [1994] 2 AMR 30: 1550.

It is salutary to recall to mind the sage words of Edgar Joseph Jr. J (as he then was) in the case of *Pacific Centre Sdn. Bhd. v. United Engineers (Malaysia) Bhd* [1984] 2 CLJ 56; ([1984] 2 CLJ (Rep) 319). There at p. 59 (p. 325) of the report, his Lordship aptly said:

> The Rules in my opinion, therefore, have statutory force and are not mere rules of practice.

The net result would be this. I refused to exercise my discretion in favour of the plaintiff for the following reasons:

(a) that it is a fundamental principle of law that the RHC must be strictly complied with;

(b) that the powers vested in O. 2 r. 1 of the RHC are the exceptions to the general rule; these powers should be exercised sparingly and it should not be used to give the litigants a carte-blanche cover to overlook all forms of irregularities;

(c) that in order for the court to exercise its discretion under O. 2 r. 1 of the RHC, there must be some material to satisfy the court in exercising its discretion;

(d) if the recalcitrant fails to provide any justification or reason for the non-compliance with the rules as embodied in the RHC, then the court ought to be reluctant to cure those defects because O. 2 r. 1 of the RHC should not be used wantonly; and

(e) a mere omission or oversight on the part of the litigants and their legal advisers should not be an excuse to invoke those all pervading powers under O. 2 r. 1 of the RHC.

In my judgment, the defendant had suffered prejudice by the plaintiff's blatant non-compliance of the RHC. Every litigation should be governed by the time table as provided by the RHC and the plaintiff should not be allowed to dictate and insert its own time table and procedure in blatant contravention of the rules. Here, the plaintiff was not prejudiced because it has the liberty to file a fresh suit with the correct and regular cause papers. For all these reasons, I allowed the defendant's appeal in encl. 17 with costs.